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2007
COURT
ICT OF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

St. Louis Cardinals LLC
______________________,
Plaintiff,

v.

Douglas J. Lewis
______________________,
Defendant.

CASE # 4: 07-CV- 473 (CEJ)

Defendants Memorandum to Amend Answer

Mr. Doug Lewis having its principal address at 4143 Fox Crossing St. Louis, Mo 63034-2009, 314-341-8567

Now comes Defendant amending answer to update the courts with communication between Defendant and Plaintiff:

Before the August 16, 2007 scheduling conference and *Per the Order Setting Rule 16 Conference,* which states, **"The parties shall meet with each other to discuss the nature, basis, claims, defenses, and possible settlement or resolution of the case".**

Basis for the Motion

Plaintiff requested Defendant cancel the below trademarks (1-9) that may have given reference to *"St. Louis Cardinal Baseball"*. In good faith the below listed Trademarks (1-9) **were cancelled** by Defendant. This was completed and communicated to Plaintiff ***BEFORE the August 16, 2007 scheduling conference.***

1). GO CARDS ST. LOUIS BASEBALL, Mo. Reg. S016,927;
2). ST. LOUIS BASEBALL, Mo. Reg. S016,273;
3). CARD BALL, Mo. Reg. S15,724;
4). CARD BALL BIRD, Mo. Reg. S015,778;
5). Red Bird Design with Baseball Glove, Mo. Reg. S15,746.
6). ILLINOIS CARDINALS, Ill. Reg. 089156
7). EAST ST. LOUIS CARDINALS, Ill. Reg. 89212,
8). I LOVE ST. LOUIS CARDINALS, Mo. Reg. S017,029;
9). GO CARDS ST. LOUIS BASEBALL, Mo. Reg. S016,927;

Exhibit D- C

ON Tuesday, August 14, 2007 the following e-mail was sent

Date: Tue, 14 Aug 2007 19:03:59 -0700 (PDT)

From: "marla white" <marla34132@sbcglobal.net>

Subject: Re: Cardinals v. Lewis

To: "Mandel, Richard" <RSM@cll.com>

CC: nclifford@armstrongteasdale.com

Lewis agrees to sign the consent agreements if it is amended to reflect.

1). Doug Lewis agrees not use the classic (script style) font or any depiction of a Cardinal Bird as it relates to "**BASEBALL**" "St. Louis Cardinals Baseball" "Baseball equipment", or Baseball Sports theme or baseball related depictions.

Lewis agrees to contain his usage of the words "Go Cards" and "Go Cardinals" to its intended and proper (*secondary meaning*) as it relates to "Wildlife Conservation.

Exhibit D- C

NOTE: THIS WAS (OMITED) AND NOT INCLUDED IN THE CONSENT JUDGMENT PRESENTED TO DEFENDANT LEWIS.

On September 1, 2007 Defendant was in the process of canceling.

Go Cards SM # S016627 for **(Wildlife Conservation)**
Go Cardinals SM# S016920 for **(Wildlife Conservation)**
(See Exhibit D-A).

Defendant Lewis was awaiting signatures from Plaintiff regarding his "I Love STL" Federal registration *(See Exhibit D – D)*. And additional papers to "withdrawn Defendants federal USPTO application, *(See Exhibit D – E)* Go Cards" Opposition No. 91172611, satisfying this case # **4: 07-CV- 473 (CEJ)** were pending awaiting Plaintiffs signatures.

ARGUMENT

It is hoped this is a big misunderstanding and the matter can be rectified. During communications Plaintiff and Defendant agreed to settle the case by agreeing to a "consent judgment" and other papers.

The only remaining action to this case was "Go Cards" and the "Go Cardinals" marks registered to Defendant Lewis for "WILDLIFE CONSERVATION", having nothing to do with St. Louis Cardinals Baseball, Baseball or Sports

(*See* USPTO Opposition # 91172611). Plaintiff led Defendant to believe if he would cancel the "Go Cards" and the "Go Cardinals" marks Plaintiff would not pursue Defendants unrelated mark "I Love STL®"*(See Exhibit D – G)*.

. Defendant under extreme Psychological torture', duress and in fear, attempted to settle this exhausting case. Defendant vulnerable signed a "*nonvoluntary*" consent judgment.

Defendant was led in believing Plaintiff would sign his part of the agreement package not to pursue defendants "I Love STL®" mark. Defendant under duress and after being coerced by Plaintiff did sign a "*nonvoluntary*" consent judgment. ***which ordinarily would have been rejected.***

Defendant was led to believe he was to secure a promised benefit in the form of (Joint *Signatures)* not just Defendants signature. Defendant under duress and to avoid threatened harm regarding Defendant unrelated USPTO Registration "I Love STL®" signed a **non- voluntary** consent judgment. The Plaintiffs goal was to elicit a single signature withholding their signature regarding **ALL** the proposed papers.

(See Agreement Exhibit D – F)

Plaintiff became silent and did not sign and return his signature on **ALL the papers**/agreements. Plaintiff now indicates "I have to check with my client first".

This non-responsive strategy would only serve to deny Defendant a timely response enabling Defendants time to run out to submit his answer per the scheduling plan. As of to date, September 14, 2007 (which is Defendants last day to file his answer), Defendant has not heard from Plaintiff.

Defendant retracts his signature in as much as Defendant *was* coerced. Defendant *believes he is being hoodwinked.* Defendant was led to believed he was satisfying this case # 4: 07-CV- 473 (CEJ) and would be free from further attacks from Plaintiff.

The devastating techniques used by Plaintiff to illicit Defendants non-voluntary signature and the effects of these tactics on the defendant are emotionally devastating.

The Plaintiffs attorneys have become extremely skilled at the practice of manipulation and deception techniques that can best be understood as a ***confidence game*** based on a coerced signature using the manipulation and betrayal of trust and fabricate evidence Plaintiff is calling, a consent judgment.

CONSENT means, complete consent not contrived, partial papers – I have the signatures I need so screw you consent. Our efforts are to settle the case not swindle.

Heavner, 1984; Hrones, 1996; Skolnick & Leo, 1992; Underwager & Wakefield, 1992; Young, 1996).
(i.e., Ayling, 1984; Brandon & Davies, 1973; Kassin & Wrightsman, 1985; Leo, 1996a, 1996b, 1996c; Leo & Ofshe, 1998).

Cards and their affiliate MLB damaged defendant's website without a court order by having anything containing the word "Card" or "Cardinals" removed from his website. *(See Exhibit D-B)*

Re; Defendants Registered "I ♥ STL"

STL is in common usage in the State of Missouri and the **City of St. Louis** for over 2,000 business names which incorporate the great *City of ST.LOUIS* identifying

ST. LOUIS PRIDE.

Defendant makes it clear that his Federally Registered "I ♥ STL" has ***absolutely NOTHING to do with the St. Louis Cardinals, Baseball, or MLB.***

1). Variations of the term "I ♥" appears in over ***1,877*** United States Patent and Trademark Office (PTO) records of composite "I ♥(an object being loved)" marks.

These over three-hundred (300) ***"REGISTERED"*** third-party "I ♥" (geographical place)" marks show that the PTO and the public consider such marks not likely to be confused.
(See Exhibit D – H)

2). The term "I ♥" is the dominate portion of composite "I ♥" (an object being loved)" marks. The dominant "I ♥" portion use in numerous third party trademarks generally, and in numerous third party composite "I ♥" (geographical place)" marks specifically makes "I ♥" an exceedingly commonplace and weak term in the respective composite marks on various types of goods and services. Thus, no individual user of the term in its respective composite "I ♥" mark is the owner of any good will therefore extending beyond their own precise composite mark used on its respective goods and services. Moreover, no user of a composite "I ♥" mark is entitled to prevent use and registration of other composite "I ♥" marks in connection with other goods and services. Moreover, a weak dominant portion "I ♥" combined with a disclaimed geographically descriptive mark further supports a limit on the scope of protection.

It is well settled that customers who purchase geographical promotion items such as those promotional goods set forth in Defendants registered service mark "I Love STL" ® have become so conditioned by the multitude of similar composite "I Love" marks over (**1,877 Records** found) that they are educated to distinguish between different such marks on the basis of minute distinctions. So the dilution doctrine does not apply ***Standard Brands, Inc. v. RJR Foods, Inc, 192 U.S.P.Q. 383 (TTAB 1976); Columbia University. V. Columbia/HCA Healthcare Corp.A, 964 F. Supp. 733, 43 U.S.P.Q.2d 1083 (S.D.N.Y. 1997).***

DISCLAIMER;

Within the USPTO and the Missouri Secretary of States office;
Defendant has "**DISCLAIMED**" any individual use of the mark STL.

In short, customers purchasing Defendant's promotional items bearing Defendant's composite "I ♥ STL ®" (geographical place)" mark that promote economic development for the state of Missouri would not be confused as to the same source as Plaintiffs promotional items. ***STL is in common use in the State of Missouri representing St. Louis Pride so the dilution doctrine would not apply.***

The Missouri Secretary of States Office was right in making their examination of defendant's application for registration of its "I Love STL(SM)" mark and ruling in his priority action on the merits that a search of the office records and has found no similar registered or pending State or Federal mark which would bar registration.

3). ***Numerous similar, registered composite*** "I ♥" (geographical place)" marks that distinguish over Plaintiffs marks entitled Defendant to registration of "I ♥ STL" (geographical place)" ***under Constitution equal protection*** of its trademark / service mark property granted to owners of the many registered "I ♥" (geographical place)" marks.

Per the Agency of the United States Department Of Commerce
United States Patent and Trademark Office

4). For purposes of dilution, a party must prove more than confusing similarity of marks; it must show that the marks are virtually "Identical".
The Toro Co. v. Torohead, Inc., 61 USPQ2d 1164, 1183 (TTAB 2001).
In the present case it is clear that the parties' mark STL on its face is not identical to defendants, I Love STL. Thus because the marks are not essentially the same, any claim must fail on this basis alone. *See* ***Carefirst of Maryland Inc. v. Firsthealth of the Carolinas Inc., 77 USPQ2d (TTAB 2005).***

5). The inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Anderson v. Liberty Lobby, Inc.,447 U.S.242(1986).*

Claim

THE LAW FORBIDS DISSECTION

"Marks must be considered in their entireties."

TEMP§1207.01(c)(ii), and TMEP§1213.05

It must be noted defendants I Love STL vs STL of the parties clearly do not look alike,

sound alike, or project the same commercial impression.
It is evident that the marks do not look alike

TMEP § 1213.05(a), Any likelihood of confusion claims are frivolous complaints.

TEMP§1207.01(c)(ii),

In re E. I. Du Pont de Nemours & Co., 177 USPQ 563 (CCPA 1973). ***The law forbids dissection*** as pointed out in TEMP§1207.01(c)(ii), it is a fundamental rule

"marks must be considered in their entireties."

See also Shen Manufacturing Co., Inc., v. The Ritz Hotel, Limited, Fed. Cir., Slip. Op. December 17, 2004 (the law forbids dissection); In re National Data Corp., 224 USPQ 749 (Fed. Cir. 1985) '

(Likelihood of confusion cannot be predicated on dissection of a mark, that is, on only one part of a mark)".

In – In re Hearst Corp., USPQ2d 1238 (Fed. Cir. 1992), the Court reversed the Board's holding that VARGA GIRL was confusingly similar to VARGAS, both for calendars: "Marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight. See Opryland USA Inc. v. Great American Music Show, Inc., 970 F.2d 847,23 USPQ2d-1471 (Fed. Cir. 1992)." (Emphasis quoted)

"(Likelihood of confusion cannot be predicated on dissection of a mark, that is, on only one part of a mark)".

Defendants *mark is sufficiently different from Plaintiff's to avoid confusion.*

Any potential confusion is, therefore,
de minims (In re E. I. Du Pont de Nemours & Co., 177 USPQ 563 (CCPA 1973).

It is well settled that "marks that may suggest somewhat similar connotation in a slightly different manner', **and are dissimilar in sight, sound and appearance *when compared in the entireties*, may not give rise to a likelihood of confusion**

(Dor-O-Matic Division of Republic Industries, Inc. b. Doormain, Inc., 199 USPQ 573 (TTAB 1978) (DOORMAID for sprig door closures and INVISIBLE DOR-MAN for automatic door operations not likely to cause confusion); the B.V.D. Licensing Corp. v. Body Action Design Inc.m, 6 USPQ2d 1719 (Fed. Cir. 1988) (Contemporaneous use of "B A D" and "B.V.D." for clothing not likely to cause confusion); gulf States Paper Corporation v. Crown Zellerbach Corporation, 163 USPQ 589 (CCPA 1969) (CZ for printing paper **held not confusingly similar** to E-Z for paper products).

Defendants cancellation of:

1). GO CARDS ST. LOUIS BASEBALL, Mo. Reg. S016,927;
2). ST. LOUIS BASEBALL, Mo. Reg. S016,273;
3). CARD BALL, Mo. Reg. S15,724;
4). CARD BALL BIRD, Mo. Reg. S015,778;
5). Red Bird Design with Baseball Glove, Mo. Reg. S15,746.
6). ILLINOIS CARDINALS, Ill. Reg. 089156
7). EAST ST. LOUIS CARDINALS, Ill. Reg. 89212,
8). I LOVE ST. LOUIS CARDINALS, Mo. Reg. S017,029;
9). GO CARDS ST. LOUIS BASEBALL, Mo. Reg. S016,927;

Was voluntary in a good faith effort to settle the case

WHEREFORE, Defendant request the non-voluntary consent judgment be stricken and the case proceed as normal with "Go Cards" and "Go Cardinals" as it relates to WILDLIFE CONSERVATION, USPTO Opposition **#91172611**.

Supporting Evidence

See - **Exhibits** for

Defendants Memorandum to Amend Answer

Filled September 14, 2007

Respectfully Submitted:

Dated: September 14, 2007

By: ____________________

Mr. Doug Lewis
4143 Fox Crossing Dr
St. Louis, Mo 63034
314-341-8567

CERTIFICATE OF MAILING AND SERVICE

I certify that on or before September 14, 2007 an original of;

Defendants Memorandum to Amend Answer

was deposited with the United States Postal Service as First Class Mail in an envelope to;

Nicholas B. Clifford, Jr

Armstrong Teasdale LLP, One Metropolitan Square,

Suite 2600

Florissant, MO 63102

314-621-5070

Fax: 314-621-5065

Email: **nclifford@armstrongteasdale.com**

Dated: September 14, 2007

Mr. Doug Lewis
4143 Fox Crossing
St. Louis, MO 63034 314-341-8567